

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Ken Nickolai  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Investigation into  
Reciprocal Compensation Rates

ISSUE DATE: December 24, 2003

DOCKET NO. P-421/CI-03-384

In the Matter of the Commission Review and  
Investigation of Qwest's Unbundled Network  
Element Prices

DOCKET NO. P-421/CI-01-1375

DOCKET NO. P-442,421,3012/M-01-1916

In the Matter of the Commission's Review and  
Investigation of Certain Unbundled Network  
Element Prices of Qwest

ORDER AFTER RECONSIDERATION

**PROCEDURAL HISTORY**

On September 24, 2003, the Commission issued an Order adjusting the end-office switching component of reciprocal compensation rates to zero to reflect new cost data developed in a recently-completed proceeding setting updated rates for Qwest's unbundled network elements. The Commission adopted the zero rate for all calls, including calls to Internet service providers.

On October 6, 2003, a coalition of competitive local exchange carriers (the CLEC Coalition) filed a petition for reconsideration or rehearing of the September 24 Order. Subsumed within that petition were requests to reconsider the issue in the context of an interconnection agreement arbitration under 47 U.S.C. § 252(b) or in the context of a proceeding to set asymmetrical reciprocal compensation rates for these CLECs under 47 C.F.R. § 51.711.

The CLEC Coalition comprises the following companies:

- Ace Telephone Association
- HomeTown Solutions LLC;
- Hutchinson Telecommunications, Inc.
- Mainstreet Communications, LLC;
- NorthStar Access, LLC;
- Otter Tail Telecom, LLC
- Paul Bunyan Rural Telephone Company
- Tekstar Communications, Inc.
- USLink, Inc.

On October 16, 2003, Qwest Corporation filed comments opposing the CLEC Coalition's request and a motion to strike the two affidavits addressing cost issues that were appended to it.

On October 27, 2003, the CLEC Coalition filed a reply to Qwest's comments and motion to strike.

On November 10, 2003, the Minnesota Department of Commerce (the Department) filed comments that supported reconsideration on the issue of reciprocal compensation for traffic to Internet service providers (ISPs) and opposed reconsideration on all other issues.

On December 11, 2003, the matter came before the Commission. AT&T Communications of the Midwest, Inc. and TCG Minnesota, Inc. (collectively, AT&T) appeared at hearing to oppose reconsideration and support Qwest's motion to strike.

### **FINDINGS AND CONCLUSIONS**

Having examined the record and having heard the arguments of all parties, the Commission concludes that, with the exception of the issue of inter-carrier compensation for ISP-bound traffic, reconsideration should not be granted. With that exception, the petition for reconsideration does not raise new issues, point to new and relevant evidence, expose errors or ambiguities in the original Order, or otherwise persuade the Commission that it should rethink its decisions in the case. The Commission will therefore limit reconsideration to the issue of compensation for ISP-bound traffic.

On that issue, the Commission concurs with the Department that the Federal Communications Commission (FCC) has preempted this Commission's authority over reciprocal compensation rates for ISP-bound traffic and that the Commission should reinstate the FCC-approved rates that were in effect prior to the September 24 Order.

In 2001 the FCC adopted a transitional compensation plan for ISP-bound traffic under which reciprocal compensation rates for that traffic will fall to zero over the course of three years.<sup>1</sup> The agency considered and rejected reducing compensation rates more rapidly, concluding that a transition period was necessary to avoid disrupting settled expectations, sunk investments, and ongoing business plans. Significantly, the agency also decided to preempt future state action on the issue:

. . . . This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under

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<sup>1</sup> Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68, FCC 01-131, 16 FCC Rcd 9151 (2001), hereinafter *ISP Remand Order*.

section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. . . .<sup>2</sup>

The Commission concurs with the Department and the CLEC Coalition that it no longer has authority to set reciprocal compensation rates for ISP-bound traffic and will therefore reinstate the rates in effect for that traffic prior to the September 24 Order. In all other respects, that Order remains in full force and effect.

Finally, the Commission notes that it did not rely on the affidavits attached to the CLEC Coalition's October 6 filing in deciding this case and will therefore not reach the issue of Qwest's motion to strike.

### **ORDER**

1. The Commission grants the CLEC Coalition's request for reconsideration or rehearing only as to the issue of appropriate inter-carrier compensation for ISP-bound traffic.
2. The Commission hereby reinstates the inter-carrier compensation rates for ISP-bound traffic that were in effect before the effective date of the September 24, 2003 Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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<sup>2</sup> *ISP Remand Order*, ¶ 82.